

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

ALISHA W. WILKES,

Plaintiff,

v.

GMAC MORTGAGE, LLC, *et al.*,

Defendants.

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Civil No. 1:10-cv-01160 (CMH-TRJ)

**DEFENDANT GMAC MORTGAGE LLC'S MEMORANDUM IN SUPPORT OF
MOTION TO STRIKE PLAINTIFF'S SUPPLEMENTAL MOTION FOR SANCTIONS
(DOCKET NO. 92)**

Defendant GMAC Mortgage LLC ("GMACM" or "Defendant"), by counsel, hereby submits its Motion to Strike Plaintiff's Supplemental Motion for Sanctions pursuant to Rule 37(c)(1) ("Supplemental Motion for Sanctions") (Docket No. 92).

Defendant was permitted, with consent of Plaintiff and leave of this Court, to file its Answer on March 18, 2011. (Docket No. 49.) Defendant filed its Answer (Docket No. 51) and also served its Rule 26(a)(1) Initial Disclosures on March 18, 2011. Plaintiff has been threatening to file a Motion for Sanctions pursuant to Rule 37(c)(1) since as early as March 22, 2011. (See Exhibit A.) There is no justification or basis for her delay in bringing forth this discovery issue – she was generally threatening a motion under Rule 37(c)(1) (without any specificity as to what relief would be requested) for almost three (3) months prior to filing this Motion for Sanctions.

Plaintiff's Supplemental Motion for Sanctions should be stricken because it is untimely. Plaintiff's Supplemental Motion for Sanctions is a discovery motion, which pursuant to this Court's Rule 16(B) Scheduled Order was required to be filed and noticed for hearing

before the final pretrial conference. As it is a discovery motion that was not filed or noticed for hearing until after the final pretrial conference, it is therefore untimely and should be stricken from the Court's docket.

This Court's Rule 16(B) Scheduling Order (Docket No. 41) provides that "[a]ll motions, except for summary judgment, shall be noticed for hearing on the earliest possible Friday *before the final pretrial conference.*" (Emphasis added.) The Final Pretrial Conference was held on June 16, 2011 (Docket No. 78.) Plaintiff waited until after the final pretrial conference, (Docket No. 93,) therefore, her Supplemental Motion for Sanctions is untimely and should be stricken.

WHEREFORE, Defendant GMAC Mortgage, LLC, by counsel, respectfully requests that the Court enter an Order: (1) granting its Motion; (2) striking Plaintiff's Supplemental Motion for Sanctions (Docket No. 92); and (3) granting it such further relief as the Court deems appropriate.

Dated: June 24, 2011

Respectfully Submitted,

GMAC MORTGAGE LLC

By: /s/ John C. Lynch
Of Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of June, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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